

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

FEB 12 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CARINA CONERLY; M. T.,

Plaintiffs-Appellants,

v.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO; et al.,

Defendants-Appellees.

No. 20-16679

D.C. No. 2:20-cv-00362-KJM-KJN
Eastern District of California,
Sacramento

ORDER

Before: CANBY, GRABER, and FRIEDLAND, Circuit Judges.

Upon a review of the record and the response to the court's January 8, 2021 order, we conclude this appeal is frivolous. We therefore deny appellants' motion to proceed in forma pauperis (Docket Entry No. 5), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

All other pending motions are denied as moot.

DISMISSED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 8 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CARINA CONERLY; M. T.,

Plaintiffs-Appellants,

v.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO; et al.,

Defendants-Appellees.

No. 20-16679

D.C. No. 2:20-cv-00362-KJM-KJN
Eastern District of California,
Sacramento

ORDER

A review of the record reflects that this appeal may be frivolous. This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellants must:

(1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), OR

(2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellants do not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellants file a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellants submit any response to this order other than a motion to dismiss the appeal, the court may dismiss this

appeal as frivolous, without further notice.

The briefing schedule for this appeal remains stayed.

The Clerk shall serve on appellants: (1) a form motion to voluntarily dismiss the appeal, and (2) a form statement that the appeal should go forward. Appellants may use the enclosed forms for any motion to dismiss this appeal or statement that the appeal should go forward.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Matthew Narensky
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

DEC 15 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CARINA CONERLY; M. T.,

Plaintiffs-Appellants,

v.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO; et al.,

Defendants-Appellees.

No. 20-16679

D.C. No.
2:20-cv-00362-KJM-KJN
Eastern District of California,
Sacramento

ORDER

On September 1, 2020, this court issued an order staying appellate proceedings pending disposition of the motion for reconsideration in the district court. On November 30, 2020, the district court denied the motion. The stay order filed September 1, 2020, is lifted and this appeal shall proceed.

A review of the district court docket reflects that appellant has not paid the docketing and filing fees for this appeal. Within 21 days after the date of this order, appellant shall: (1) file a motion with this court to proceed in forma pauperis accompanied by a completed Form 4 affidavit; or (2) pay \$505.00 to the district court as the docketing and filing fees for this appeal and provide proof of payment to this court.

The Clerk shall serve a Form 4 financial affidavit on appellant.

The filing of a motion to proceed in forma pauperis will automatically stay the briefing schedule under Ninth Circuit Rule 27-11.

If appellant fails to comply with this order, the appeal will be dismissed automatically by the Clerk under Ninth Circuit Rule 42-1.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Joseph Williams
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 1 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CARINA CONERLY; M. T.,

Plaintiffs-Appellants,

v.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO; et al.,

Defendants-Appellees.

No. 20-16679

D.C. No.
2:20-cv-00362-KJM-KJN
Eastern District of California,
Sacramento

ORDER

The court's records reflect that the notice of appeal was filed during the pendency of a timely-filed motion listed in Federal Rule of Appellate Procedure 4(a)(4), and that motion is still pending in the district court. The August 27, 2020 notice of appeal is therefore ineffective until entry of the order disposing of the last such motion outstanding. *See* Fed. R. App. P. 4(a)(4). Accordingly, proceedings in this court are held in abeyance pending the district court's resolution of the pending July 24, 2020 motion. *See Leader Nat'l Ins. Co. v. Indus. Indem. Ins. Co.*, 19 F.3d 444, 445 (9th Cir. 1994).

Within 14 days after the district court's ruling on the pending motion, appellant shall file a written notice in this court: (1) informing this court of the district court's ruling; and (2) stating whether appellant intends to prosecute this appeal.

To appeal the district court's ruling on the post-judgment motion, appellant must file an amended notice of appeal within the time prescribed by Federal Rule of Appellate Procedure 4.

The Clerk shall serve this order on the district court.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Joseph Williams
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX E

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JUDGMENT IN A CIVIL CASE

CARINA CONERLY, ET AL.,

CASE NO: 2:20-CV-00362-KJM-KJN

v.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO, ET AL.,**

Decision by the Court. This action came before the Court. The issues have been tried, heard or decided by the judge as follows:

IT IS ORDERED AND ADJUDGED

**THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE
COURT'S ORDER FILED ON 7/20/2020**

**Keith Holland
Clerk of Court**

ENTERED: July 20, 2020

by: /s/ H. Huang

Clerk of Court

MIME-Version:1.0 From:caed_cmecf_helpdesk@caed.uscourts.gov To:CourtMail@localhost.localdomain
M. T.
1501 Amazon Ave
Sacramento CA 95835
, Carina Conerly
1501 Amazon Ave.
Sacramento CA 95835

--Case Participants: Chief District Judge Kimberly J. Mueller (caed_cmecf_kjm@caed.uscourts.gov),
Magistrate Judge Kendall J. Newman (caed_cmecf_kjn@caed.uscourts.gov)

--Non Case Participants:

--No Notice Sent:

Message-Id: Subject:Activity in Case 2:20-cv-00362-KJM-KJN (PS) Conerly et al v. Superior Court of
California County of Sacramento et al Judgment. Content-Type: text/html

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U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was entered on 7/20/2020 at 9:34 AM PDT and filed on 7/20/2020

Case Name: (PS) Conerly et al v. Superior Court of California County of Sacramento et al

Case Number: 2:20-cv-00362-KJM-KJN

Filer:

WARNING: CASE CLOSED on 07/20/2020

Document Number: 19

Docket Text:

**JUDGMENT dated *7/20/2020* pursuant to order signed by Chief District Judge Kimberly J.
Mueller on 7/17/2020. (Huang, H)**

2:20-cv-00362-KJM-KJN Notice has been electronically mailed to:

**2:20-cv-00362-KJM-KJN Electronically filed documents must be served conventionally by the filer
to:**

M. T.
1501 Amazon Ave
Sacramento CA 95835

Carina Conerly
1501 Amazon Ave.
Sacramento CA 95835

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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 CARINA CONERLY,

12 Plaintiff,

13 v.

14 SUPERIOR COURT OF CALIFORNIA,
15 et al.,

16 Defendants.

No. 2:20-cv-362-KJM-KJN PS

ORDER

(ECF Nos. 1, 10, 15)

17 On April 29, 2020, the magistrate judge filed findings and recommendations (ECF No.
18 16) which were served on the parties and which contained notice that any objections to the
19 findings and recommendations were to be filed within fourteen (14) days. On May 8, 2020,
20 plaintiff filed objections to the findings and recommendations (ECF No. 17), which have been
21 considered by the court.

22 This court reviews de novo those portions of the proposed findings of fact to which an
23 objection has been made. 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore*
24 *Business Machines*, 656 F.2d 1309, 1313 (9th Cir. 1981); *see also Dawson v. Marshall*, 561 F.3d
25 930, 932 (9th Cir. 2009). As to any portion of the proposed findings of fact to which no objection
26 has been made, the court assumes its correctness and decides the matter on the applicable law.
27 *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's

1 conclusions of law are reviewed de novo. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d
2 452, 454 (9th Cir. 1983).

3 The court has reviewed the applicable legal standards and, good cause appearing,
4 concludes that it is appropriate to adopt the findings and recommendations in full. Accordingly,

5 IT IS HEREBY ORDERED that:

- 6 1. The findings and recommendations (ECF No. 16) are ADOPTED IN FULL;
- 7 2. Plaintiffs' Complaint (ECF No. 1) is DISMISSED WITH PREJUDICE; and
- 8 3. The Clerk of the Court is directed to CLOSE this case.

9 DATED: July 17, 2020.

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11 CHIEF UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARINA CONERLY, et al.

Plaintiffs,

v.

SUPERIOR COURT OF CALIFORNIA,
et al.,

Defendants.

No. 2:20-cv-362-KJM-KJN PS

FINDINGS AND RECOMMENDATIONS:
ASSOCIATED ORDER

(ECF No. 1, 10, 15)

Plaintiffs filed this case on February 18, 2020, and paid the filing fee. (ECF No. 1.) Three days later, plaintiffs filed a motion to appoint counsel. (ECF No. 6.) On March 4, the court denied this request, and two days later plaintiffs moved for reconsideration.¹ (ECF Nos. 9, 10.)

The court has reviewed plaintiffs' request, and finds no good cause for reconsideration. More importantly, however, a review of plaintiffs' allegations and claims asserted demonstrates that the court has no subject matter jurisdiction to hear this case. Thus, the undersigned recommends this case be dismissed with prejudice.

¹ Additionally, the court's docket indicates that plaintiffs filed executions of summons on February 21, 2020. On March 12, plaintiffs requested an entry of default, but the Clerk of the Court declined because the executed summons did not "specifically indicate that Defendants were properly served." (ECF Nos. 13, 14.) Plaintiffs have requested the Clerk reconsider this decision as well. (ECF No. 15.)

1 **Legal Standard**

2 A federal Court has an independent duty to assess whether federal subject matter
3 jurisdiction exists, whether or not the parties raise the issue. See United Investors Life Ins. Co. v.
4 Waddell & Reed Inc., 360 F.3d 960, 967 (9th Cir. 2004); Rains v. Criterion Sys., Inc., 80 F.3d
5 339, 342 (9th Cir. 1996). The Court must, on its own action, dismiss the case if at any time it
6 determines that it lacks subject matter jurisdiction. Fed. R. Civ. P. 12(h)(3).

7 A federal district court generally has original jurisdiction over a civil action when: (1) a
8 federal question is presented in an action “arising under the Constitution, laws, or treaties of the
9 United States” or (2) there is complete diversity of citizenship and the amount in controversy
10 exceeds \$75,000. See 28 U.S.C. §§ 1331, 1332(a).

11 However, federal courts do not have jurisdiction over claims where the defendant is
12 absolutely immune from suit. See Franklin v. State of Or., State Welfare Division, 662 F.2d 1337
13 (9th Cir. 1981). Further, federal courts lack subject matter jurisdiction to consider claims that are
14 “so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise
15 completely devoid of merit as not to involve a federal controversy.” Steel Co. v. Citizens for a
16 Better Environment, 523 U.S. 83, 89 (1998) (citations and internal quotations omitted); Hagans v.
17 Lavine, 415 U.S. 528, 537 (1974) (court lacks subject matter jurisdiction over claims that are
18 “essentially fictitious,” “obviously frivolous” or “obviously without merit”); see also Grancare,
19 LLC v. Thrower by & through Mills, 889 F.3d 543, 549–50 (9th Cir. 2018) (noting that the
20 “wholly insubstantial and frivolous” standard for dismissing claims operates under Rule 12(b)(1)
21 for lack of federal question jurisdiction) (citing Franklin v. Murphy, 745 F.2d 1221, 1227 n.6 (9th
22 Cir. 1984) (“A paid complaint that is ‘obviously frivolous’ does not confer federal subject matter
23 jurisdiction.”) (abrogated on other grounds)).

24 Pro se pleadings are liberally construed. See Haines v. Kerner, 404 U.S. 519, 520-21
25 (1972); Balistreri v. Pacifica Police Dep’t., 901 F.2d 696, 699 (9th Cir. 1988). Unless it is clear
26 that no amendment can cure the defects of a complaint, a pro se plaintiff proceeding in forma
27 pauperis is ordinarily entitled to notice and an opportunity to amend before dismissal. See
28 Murphy, 745 F.2d at 1230.

1 **Analysis**

2 Plaintiffs raise claims under the U.S. Constitution, for alleged violations of their 1st, 5th,
3 and 14th Amendment rights. The vehicle by which a litigant brings a constitutional claim is 42
4 U.S.C. § 1983. See Imbler v. Pachtman, 424 U.S. 409, 417 (1976) (“Every person who acts
5 under color of state law to deprive another of a constitutional right shall be answerable to that
6 person in a suit for damages.”) Plaintiffs allege that three California Superior Court judges were
7 biased against plaintiff Carina Conerlyu in her various disputes with one Sharif Roldan Tarpin.
8 (ECF No. 1 at 3-4.) Plaintiffs further allege Tarpin acted in concert with these judges. As a
9 result, the Superior Court judges issued determinations adverse to plaintiffs’ positions. Even
10 treated liberally, the court has no subject matter over plaintiffs’ claims.

11 First, state judges are absolutely immune from civil liability for damages for acts
12 performed in their judicial capacity. See Pierson v. Ray, 386 U.S. 547, 553–55 (1967) (applying
13 judicial immunity to actions under 42 U.S.C. § 1983). Judicial immunity constitutes an immunity
14 from suit, not just from an ultimate assessment of damages. Mireles v. Waco, 502 U.S. 9, 11
15 (1991). A judge is not deprived of immunity because she takes actions which are erroneous,
16 malicious, or in excess of his authority. Meek v. Cnty. of Riverside, 183 F.3d 962, 965 (9th Cir.
17 1999) (“The rationale for granting judges immunity from liability for even intentional and
18 malicious conduct while acting in their judicial capacity is that judges should be free to make
19 controversial decisions and act upon their convictions without fear of personal liability.”).
20 “[J]udicial immunity is not overcome by allegations of bad faith or malice.” Mireles, 502 U.S. at
21 11. There are two general circumstances where judicial immunity is overcome: (1) where a
22 judge's act is not a judicial action, and (2) when the judge acts in the clear absence of all
23 jurisdiction. Id. at 11-12; see also Hyland v. Wonder, 117 F.3d 405, 413 n. 1 (9th Cir.1997), as
24 amended 127 F.3d 1135 (9th Cir. 1997). Neither of those circumstances apply here. Because the
25 court has no jurisdiction to hear these claims, they should be dismissed. See Franklin v. State of
26 Or., State Welfare Division, 662 F.2d at 1345 (affirming dismissal of Section 1983 claims where
27 some parties enjoyed absolute immunity from suit due to judicial-process protections).

28 ///

Further, the undersigned finds the associated “conspiracy” claim as between these Superior Court judges and Tarpin to be conclusory and frivolous on their face. See Dietrich v. John Ascuaga's Nugget, 548 F.3d 892, 900 (9th Cir. 2008) (noting that private individuals are not liable under Section 1983 unless they meet one of four tests, and reminding that “a bare allegation of such joint action will not overcome [dismissal.]”) For this additional reason, the court recommends dismissal. See, e.g., Sameer v. Khera, 2018 WL 6338729, at *2 (E.D. Cal. Dec. 5, 2018) (dismissing as frivolous plaintiff’s conspiracy claims as between her ex-husband and, among others, two state court judges) (appeal dismissed, 2019 WL 7425404 (9th Cir. Aug. 27, 2019)); Garrett v. Muller, 2012 WL 1682585, at *1 (D. Or. May 11, 2012) (finding the allegation of a conspiracy involving the military, FBI agents, the Catholic Church, public defenders, judges, and the Secretary of Defense to take away plaintiff’s child to be frivolous).

Finally, because no amount of amendment can save plaintiffs’ claims, the court recommends dismissal with prejudice. Murphy, 745 F.2d at 1230.

ORDER

Because of the court’s findings and recommendations, it is HEREBY ORDERED that:

1. Plaintiffs’ motions for reconsideration (ECF Nos. 10, 15) are DENIED AS MOOT;
2. The status conference before the undersigned, currently set for a June 18, 2020 hearing (see ECF No. 5), is VACATED; and
3. All pleading, discovery, and motion practice in this action are stayed pending resolution of these findings and recommendations. Other than objections to the findings and recommendations or non-frivolous motions for emergency relief, the court will not entertain or respond to any pleadings or motions until the findings and recommendations are resolved.

RECOMMENDATIONS

Accordingly, it is HEREBY RECOMMENDED that:

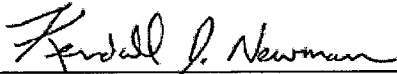
1. Plaintiffs’ Complaint (ECF No. 1) be DISMISSED WITH PREJUDICE;
2. The Clerk of the Court be directed to CLOSE this case.

These findings and recommendations are submitted to the United States District Judge

1 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
2 days after being served with these findings and recommendations, plaintiffs may file written
3 objections with the court and serve a copy on all parties. Such a document should be captioned
4 "Objections to Magistrate Judge's Findings and Recommendations." Plaintiffs are advised that
5 failure to file objections within the specified time may waive the right to appeal the District
6 Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d
7 1153, 1156-57 (9th Cir. 1991).

8 IT IS SO ORDERED AND RECOMMENDED.

9 Dated: April 28, 2020

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11 KENDALL J. NEWMAN
12 UNITED STATES MAGISTRATE JUDGE

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U.S. District Court

Eastern District of California – Live System

Notice of Electronic Filing

The following transaction was entered on 7/20/2020 at 9:33 AM PDT and filed on 7/20/2020

Case Name: (PS) Conerly et al v. Superior Court of California County of Sacramento et al

Case Number: 2:20-cv-00362-KJM-KJN

Filer:

WARNING: CASE CLOSED on 07/20/2020

Document Number: 18

Docket Text:

ORDER signed by Chief District Judge Kimberly J. Mueller on 7/17/2020 ADOPTING [16]
Findings and Recommendations in full, and DISMISSING [1] Complaint with prejudice. CASE
CLOSED. (Huang, H)

2:20-cv-00362-KJM-KJN Notice has been electronically mailed to:

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Carina Conerly
1501 Amazon Ave.
Sacramento, CA 95835

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1501 Amazon Ave
Sacramento, CA 95835

The following document(s) are associated with this transaction:

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 31 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

CARINA CONERLY; M. T.,

Plaintiffs - Appellants,

v.

SUPERIOR COURT OF
CALIFORNIA COUNTY OF
SACRAMENTO; UDUAK INYANG
ODUOK; JOHN PATRICK WINN;
OLUBUNMI OLAIDE AWONIYI;
SHARIF ROLDAN TARPIN,

Defendants - Appellees.

No. 20-16679

D.C. No. 2:20-cv-00362-KJM-KJN
U.S. District Court for Eastern
California, Sacramento

TIME SCHEDULE ORDER

The parties shall meet the following time schedule.

Mon., October 26, 2020

Appellant's opening brief and excerpts of record
shall be served and filed pursuant to FRAP 31 and
9th Cir. R. 31-2.1.

**Failure of the appellant to comply with the Time Schedule Order will result in
automatic dismissal of the appeal. See 9th Cir. R. 42-1.**

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Jessica Poblete Dela Cruz
Deputy Clerk
Ninth Circuit Rule 27-7

**Additional material
from this filing is
available in the
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